

- (1) What is the nature and extent of claimant's injury and/or disability?
- (2) What is the amount of compensation due, if any?
- (3) Is claimant entitled to payment for past medical expense?
- (4) Is claimant entitled to an award of future medical expense and treatment with Dr. K. Dean Reeves?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant was injured on February 23, 1989, in Johnson County, Kansas, while working for respondent in its merchandise distribution center. Claimant underwent conservative treatment under the care of several doctors through April 1990. Claimant underwent bone scans, CT scans, MRIs, EMGs, x-rays, and several physical examinations, all of which resulted in normal findings. Claimant was referred on two separate occasions to physical therapy but failed to complete the physical therapy programs on either occasion. The first time claimant attended four physical therapy appointments out of a two-week treatment prescription.

Claimant was diagnosed with soft tissue injuries and, based upon her subjective complaints, given a ten percent whole body functional impairment by Dr. James S. Zarr a clinical assistant professor of the Department of Rehabilitation Medicine at The University of Kansas Medical Center. From April 1990 through the date of the regular hearing, which was held on January 9, 1996, claimant failed to request medical treatment of any kind from respondent. Claimant began receiving unauthorized treatment from Dr. Reeves on February 7, 1994. It is significant that Dr. Reeves commenced treating claimant without having been granted access to any of the substantial medical records maintained on claimant up to this point. He was unsure of the exact nature of claimant's previous treatment and was unsure of the mechanism of claimant's injury. Dr. Reeves was also unable to state whether claimant's symptoms were causally connected to the February 23, 1989, injury and provided claimant a functional whole body impairment rating which was not based upon the American Medical Association Guides to the Evaluation of Permanent Impairment.

Dr. Reeves did recommend a long-term treatment program which, by his own admission, is experimental recognized by only a small minority of physicians and insurance companies across the nation and is currently in the research stage. Dr. Reeves' treatment consisted of multiple injections to the claimant, at the cost of \$500 per visit, with no limit to the number of treatments which may be required.

Claimant underwent an independent medical evaluation on July 14, 1995, with Dr. Craig G. Mills at The Rehabilitation Institute in Kansas City, Missouri. Dr. Mills found no objective evidence that claimant had suffered accidental injury but did give claimant a 15 percent permanent partial impairment to the body as a whole based upon claimant's subjective complaints. Dr. Mills' impairment rating was pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. Dr. Mills recommended no additional treatment finding that claimant had reached maximum medical improvement. The findings from Dr. Mills' evaluation on July 14, 1995, are very similar to the findings of Dr. Zarr from his examination of claimant in 1989.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1988 Supp. 44-501 and K.S.A. 1988 Supp. 44-508(g).

In reviewing the medical evidence in the record, the Appeals Board looks with concern at the treatment recommendations by Dr. Reeves. To recommend long-term care with no predictable end at \$500 per treatment is questionable at best. It creates even more concern when it is acknowledged that this treatment is experimental. It is recognized by only a small minority of doctors across the nation. The Appeals Board also notes that claimant's examination in 1989 resulted in findings very similar to those of Dr. Mills in 1995. The lack of objective medical evidence from the multitude of examinations and tests performed on claimant casts doubt on the severity of claimant's injury and the need for additional treatment.

K.S.A. 1988 Supp. 44-510e(a) states in part:

Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence.

In reviewing the medical evidence of Dr. Zarr and Dr. Mills, the Appeals Board finds their assessment of claimant's limitations appears to more accurately reflect the true picture of claimant's limitations. The medical report and opinion from Dr. Reeves are not credible for the reasons above stated. As such the Appeals Board finds, based upon the 1995 examination by Dr. Mills, that claimant has suffered a 15 percent permanent partial general body disability on a functional basis.

With regard to claimant's request for past medical expense and the award of future medical expense with Dr. Reeves, the Appeals Board must respectfully decline both requests. The experimental treatments recommended by Dr. Reeves are questionable. The past medical expenses in the amount of \$3,500 charged by Dr. Reeves were incurred without respondent's knowledge and with no request by claimant for authorization from the respondent for this treatment. It is also significant that until the regular hearing in 1996

respondent was unaware claimant was receiving these treatments. As such the Appeals Board finds that claimant's request for past medical expenses of \$3,500 for the treatment provided by Dr. Reeves and claimant's request for future medical with Dr. Reeves should be and are hereby denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated May 24, 1996, should be, and is hereby modified and the claimant, Debbie Zimmerman, is granted an award against J. C. Penney Company and its insurance carrier, Liberty Mutual Insurance Company, for a 15% permanent partial general body disability on a functional basis, for an accidental injury occurring on or about February 23, 1989.

Claimant is entitled to 42.71 weeks temporary total disability compensation at the rate of \$263 per week totaling \$11,232.73 followed by 372.29 weeks permanent partial disability at the rate of \$40.28 per week totaling \$14,995.84 for a total award of \$26,228.57.

As of September 20, 1996, claimant would be entitled to 42.71 weeks temporary total disability compensation at the rate of \$263 per week totaling \$11,232.73 followed by 352.43 weeks permanent partial general body disability at the rate of \$40.28 per week totaling \$14,195.88 for a total due and owing of \$25,428.61 which is ordered paid in one lump sum minus amounts previously paid. Thereafter claimant is entitled to 19.86 weeks permanent partial disability at the rate of \$40.28 per week totaling \$799.96 until fully paid or until further order of the director.

Future medical treatment for claimant may be awarded upon proper application to and approval by the director.

Claimant's request for reimbursement of \$3,500 medical for the treatment by Dr. K. Dean Reeves is denied but claimant is entitled to an allowance of unauthorized medical in the amount of \$350 which is ordered paid upon presentation of an itemized statement verifying same.

Fees and expenses of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Metropolitan Court Reporters, Inc.	\$286.50
Hostetler & Associates, Inc.	\$538.75

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: George W. Richardson, Kansas City, MO
Stephanie Warmund, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director